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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,525	02/22/2002	Daniel Joseph Giambalvo	DJG101	5960

7590

07/15/2004

IP STRATEGIES, P.C.  
1730 N. Lynn Street  
Suite 500  
Arlington, VA 22209

EXAMINER

CHOULES, JACK M

ART UNIT

PAPER NUMBER

2177

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/082,525

Applicant(s)

GIAMBALVO, DANIEL JOSEPH

Examiner

Jack M Choules

Art Unit

2177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1-20 are presented for examination.

#### *Claim Rejections - 35 USC § 101*

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-8 and 10-15, and 18 detail "A framework" comprising: "a first tier defining" and a second tier providing specific implementations" the elements in the body of the claims apparently to refer to a data structure per se with some elements referring to a description of computer program elements per se as there is no claim element relating to computer readable media. See MPEP 2106 IV B 1 (a). It is noted that the phrase "for creating a search system..." is simple an intended use as it is not a positive statement of function as no element in the body of the claims provides a search or query.

Claims 9, 16 and 17 detail "a search system..." the body or the claims the elements in the body of the claims apparently to refer to a data structure per se with some elements referring to a description of computer program elements per se as there is no claim element relating to computer readable media. See MPEP 2106 IV B 1 (a). It is noted that the phrase "A search

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system..." is simple an intended use as no element in the body of the claims provides a search or query.

Claims 19 and 20 are method claims, however, are considered mental steps or manipulation of abstract ideas, as there is no limitation in the claims to physical elements such as a computer or network of computers. See MPEP 2106 IV B 1.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Motoyama et al. US Patent No. 6,578,090.

5. As to claims 1, 2, 9, 10, 11, 18, Motoyama disclosed the invention substantially as claimed including a data processing system ['DP'] comprising "a first tier" (col. 1, lines 53-67 and col. 2 lines 1-5) and "a second tier" (col. 1, lines 53-67 and col. 2 lines 1-5).

6. Motoyama does not detail sources /resources or NetResource however as these elements are presented no function is given in the claims, as they are data elements without a claimed function they are considered non-functional descriptive material. Non-functional descriptive material cannot render non-obvious and invention that would have otherwise been obvious. See MPEP 2106 VI.

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7. As to claims 3-8 and 12-17, the elements of these claims are also considered to be non-functional descriptive material as there is no physical system recited in and elements of the claim on which the elements may function.

8. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sondur et al. US patent No. 6,243,746.

9. As to claims 19 and 20, disclosed the invention substantially as claimed including a data processing system ['DP'] comprising "initiating a call" it is implicit to Sondur that a call or command would be issued to access the system a access to the objects as the database support is envisioned as an independent component (col. 2, lines 10-26) and "common API..." (col. 2, lines 10-60).

10. Sondur does not detail "container NetResource" however as this element is presented with no function given in the claims, as they are data elements without a claimed function, it is considered non-functional descriptive material. Non-functional descriptive material cannot render non-obvious and invention that would have otherwise been obvious. See MPEP 2106 VI.

### *Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

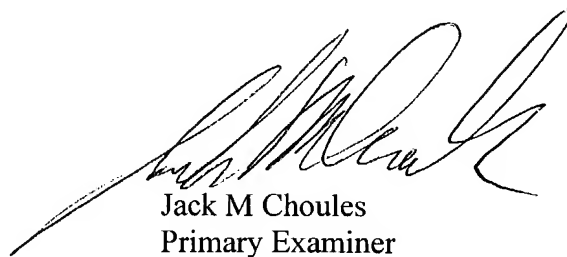
Dahan et al.	6,199,059 B1	Hierarchy of virtual objects.
Alimpich et al.	6,111,579 A	Hierarchy of network elements.
Nageswaran	6,088,651 A	Network resource search.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack M Choules whose telephone number is (703) 305-9840. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (703) 305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack M Choules  
Primary Examiner  
Art Unit 2177

JMC